



David G. Oppenheimer
PO Box 8105
Asheville, NC 28814 USA

E-Mail: dave@performanceimpressions.com
Website: www.performanceimpressions.com
Tel: (828) 273-9339

OCTOBER 1, 2014

(FOR SETTLEMENT PURPOSES ONLY, SUBJECT TO F.R.O. 408)

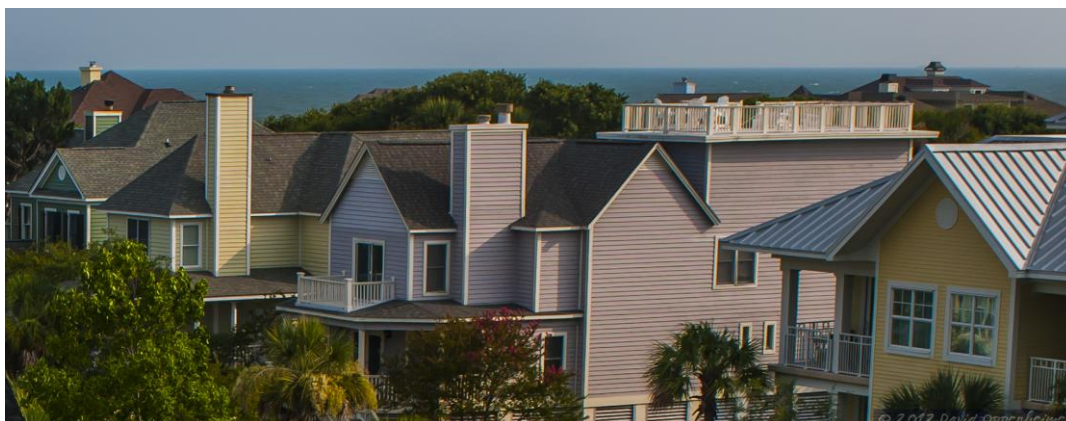
By FedEx

Calvin Van Noord
Van Noord & Associates, Inc.
17 E. 8th St. Ste. 210
Holland, MI 49423

By e-Mail

Attn: Calvin Van Noord
Email: calv@vn-a.com

I have discovered that Van Noord & Associates Inc. is using one of my photographs on its website at the following URL: <http://vn-a.com/market-area/>. My company does not have a license on file for Van Noord & Associates Inc.'s use of my work. This use is an ongoing copyright infringement of my intellectual property. I license my photography through my company, Performance Impressions LLC. Be on notice that litigation is likely to occur as a result of Van Noord & Associates Inc.'s copyright infringement of my work. Van Noord & Associates Inc.'s infringement of my photograph, even if not done deliberately, entitles me to recover enhanced statutory damages because my photograph was originally published with numerous copyright notices including a watermark with legible copyright management information shown below in Exhibit A:



David G. Oppenheimer | Performance Impressions LLC | PO Box 8105 , Asheville, NC 28814 USA
dave@performanceimpressions.com | www.performanceimpressions.com

phone: 001 828.273.9339

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EXHIBIT D



EXHIBIT A

Van Noord & Associates Inc.'s use of my photograph is shown below as Exhibit B:

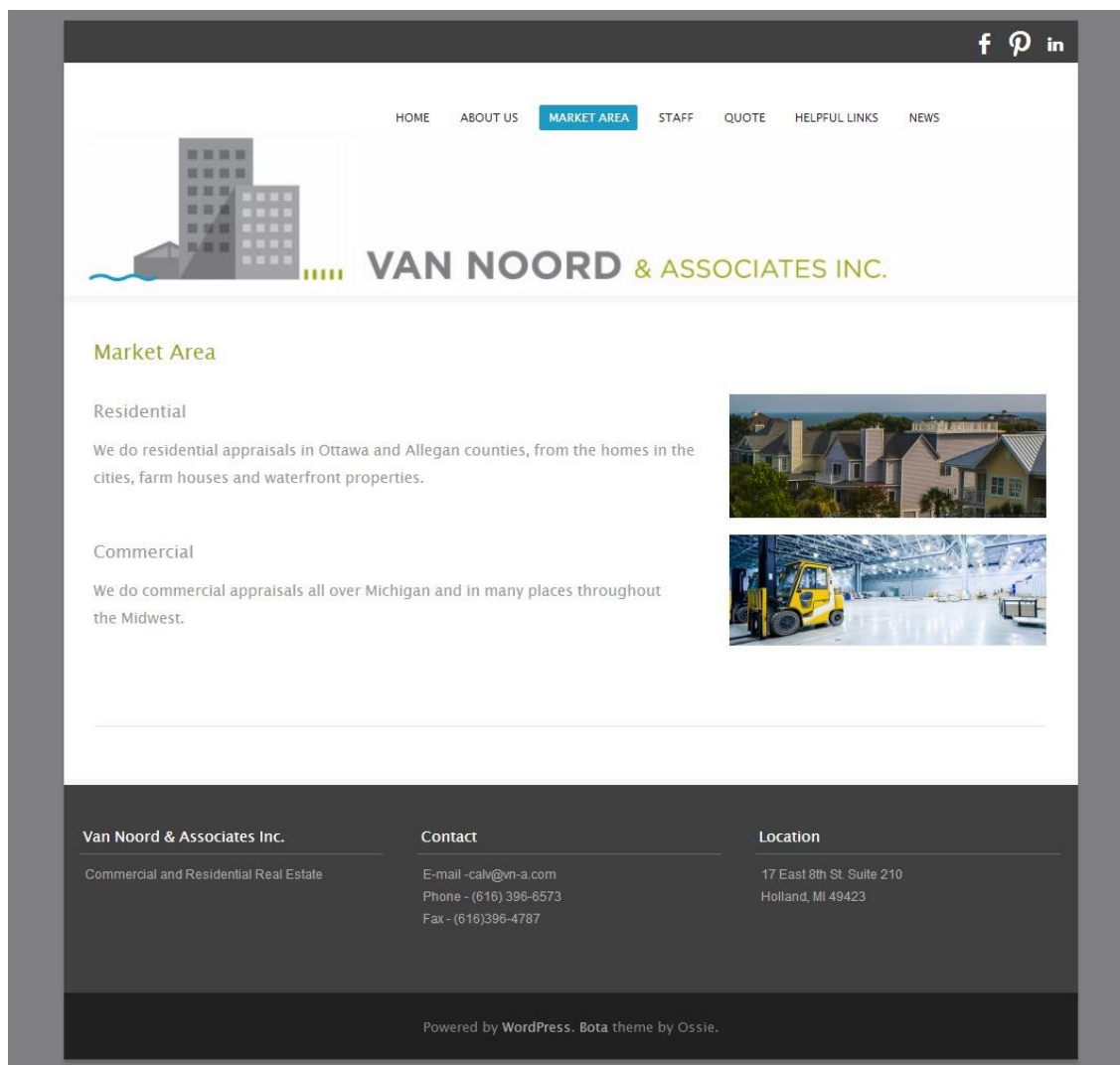


EXHIBIT B


My website also has numerous copyright notices on the page where the photograph was originally published. Penalties for copyright infringement can be \$30,000 per infringement under 17 USC § 504(c)(1). Additionally, because my work had a prominent notice of copyright, this infringement could be considered reckless, entitling me to recover enhanced statutory damages of up to \$150,000 under 17 USC § 504(c)(2) in addition to being awarded attorney fees. Furthermore, Van Noord & Associates Inc. is liable for damages for state claims including unjust enrichment. My photograph was registered with the United States Copyright Office under

EXHIBIT D



registration number VAu 1-108-074 with an effective registration date of July 16, 2012. The certificate is shown below as Exhibit C.

Certificate of Registration

 This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante
Register of Copyrights, United States of America

Registration Number
VAu 1-108-074

Effective date of registration:
July 16, 2012

Title _____
Title of Work: 2012 Events and Travels by David Gordon Oppenheimer

Completion/Publication _____
Year of Completion: 2012

Author _____
■ Author: David Gordon Oppenheimer
Author Created: photograph(s)

Work made for hire: No
Citizen of: United States Domiciled in: United States
Year Born: 1970

Copyright claimant _____
Copyright Claimant: David Gordon Oppenheimer
P.O. Box 8105, Asheville, NC, 28814, United States

Rights and Permissions _____
Organization Name: Performance Impressions LLC
Name: David Gordon Oppenheimer
Email: dave@performanceimpressions.com Telephone: 828-273-9339
Address: P.O. Box 8105
Asheville, NC 28814 United States

Certification _____
Name: David Gordon Oppenheimer
Date: July 16, 2012

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EXHIBIT C

EXHIBIT D



Because my photograph was registered prior to the start of Van Noord & Associates Inc.'s infringement, the full protections of applicable copyright laws are in effect.

Actions Demanded

1. Cease and desist any use of my photograph as shown in Exhibit B including removing my photograph from Van Noord & Associates Inc.'s webpage and server so that they are no longer online.
2. Provide full details on Van Noord & Associates Inc.'s use of my photograph shown in Exhibit A including the name(s) of all individuals involved with the publishing of my photograph on your website and newspaper and the names of any other companies involved.
3. Provide details on the use of any other of my photographs known to have been used by Van Noord & Associates Inc. if applicable.
4. Preserve an accounting of actions taken to comply with Notice to Preserve Documents and Data.

Notice to Preserve Documents and Data

Van Noord & Associates Inc. is on notice that litigation is likely regarding its actions concerning my photograph. Van Noord & Associates Inc. is now obligated and has the duty to preserve all evidence that may be relevant to the dispute discussed above and that may be the subject of pending litigation. This duty of preservation extends to, but is not limited to, data files, e-mails (including headers), calendars, telephone logs, access lists, and logs that are located on Van Noord & Associates Inc.'s computer networks, e-mail servers, mainframes, individual computer workstations and external drives, or are located on any of those devices within Van Noord & Associates Inc.'s control but not owned by Van Noord & Associates Inc. such as the web host. Specifically, but not exclusively, Van Noord & Associates Inc. is on notice that it must preserve all evidence of all uses of my photograph. This notice for preservation extends to employees' or agents' personal computers or other devices if they have potentially relevant data related to this cause.

Van Noord & Associates Inc. is required by law to suspend any practice, even a normal or routine practice that might purge, delete, or overwrite any electronic document or other evidence, including database matter and related structural information, files remnants, metadata, residual, and hidden data. This duty extends to Van Noord & Associates Inc.'s employees and agents. I request that Van Noord & Associates Inc. notify any such employee or agent of this retention request immediately. This duty also extends to the preservation of Van Noord & Associates Inc.'s replaced computers, hard drives, and other storage media. If you or anyone employed by you back up any computer drives, the back-up files must be preserved, as well. I request that Van Noord & Associates Inc. immediately back up and archive any documents, including e-mails and all other communications, between Van Noord & Associates Inc. and all other persons and entities that relate to my photograph.



I further request that Van Noord & Associates Inc. suspend any act or practice that would cause defragmentation, compression, or reformatting of those hard drives. If potentially relevant data is encrypted, preservation of serial keys and/or other information needed to access data must also be preserved. All metadata for electronic files that may contain potentially relevant information must be preserved as well. Sanctions for violating any of the foregoing duties can be severe and include substantial monetary sanctions, adverse inferences in evidentiary rulings, and the entry of judgments by default. I remain hopeful that we can resolve this dispute short of litigation. The above duties, however, must be satisfied during any settlement or other discussions that we may have.

Offer to Settle

In an offer to settle this matter outside of litigation, I will release all claims against Van Noord & Associates Inc. for willful statutory copyright infringement and related claims for its uses of my photograph as shown as Exhibit B, if you send a certified bank check in the amount of \$25,000 U.S. dollars payable to Performance Impressions LLC to this address:

David Oppenheimer
Performance Impressions, LLC
P.O. Box 8105
Asheville, NC 28814

This offer to settle is valid through Friday, October 26, 2014.

I recommend that you consult with your insurance carrier to see if they will cover this claim.

This offer to settle is contingent upon me having to take no further action in this matter. If this offer is not accepted by Friday, October 26, 2014, then litigation may be initiated at any time thereafter without further notice. If you or your insurance carrier needs more time to respond, please contact me to arrange this. My offer to settle does not reflect the amount that I can and will seek should litigation be required to settle this matter which is many times greater. This letter is without prejudice to my rights and claims which are hereby reserved.

Sincerely,

A handwritten signature in black ink that reads 'David Oppenheimer'. The signature is written in a cursive, flowing style.

/s/ David G. Oppenheimer

from: **David Oppenheimer - Performance Impressions, LLC** <performanceimpressions@gmail.com>
reply-to: dave@performanceimpressions.com
to: Calvin Van Noord
<van Noord@novagate.com>
date: Fri, Sep 5, 2014 at 2:40 PM
subject: Image Use on VN-A.com
mailed-by: gmail.com
: Important according to our magic sauce.

Dear Mr. Van Noord,

I noticed that my photo is being used on your site at the following image URL: <http://vn-a.com/wp-content/uploads/2013/11/lakeresidential.jpg>

Who at your company published my photo and where did they get it?

Sincerely,

David

[email bounced]

from: **Mail Delivery Subsystem** <mailer-daemon@googlemail.com>
to: performanceimpressions@gmail.com
date: Mon, Sep 8, 2014 at 6:12 PM
subject: Delivery Status Notification (Failure)
mailed-by: google.com
signed-by: googlemail.com
: Important mainly because of your interaction with messages in the conversation.

Delivery to the following recipient failed permanently:

vannoord@novagate.com

Technical details of permanent failure:

The recipient server did not accept our requests to connect. Learn more

EXHIBIT D

at <http://support.google.com/mail/bin/answer.py?answer=7720>
[(100) localhost.novagate.net. [127.0.0.1]:25: Connection refused]

from: **David Oppenheimer - Performance Impressions, LLC** <performanceimpressions@gmail.com>
reply-to: dave@performanceimpressions.com
to: calv@vn-a.com

date: Mon, Sep 8, 2014 at 2:05 PM
subject: Image Use on VN-A.com
mailed-by: gmail.com

Dear Mr. Van Noord,

I noticed that my photo of Wild Dunes Resort is being used on your site at the following URL: <http://vn-a.com/market-area/>

The photo can be found on your server at the following image URL: <http://vn-a.com/wp-content/uploads/2013/11/lakeresidential-300x117.jpg>

Who at your company published my photo and where did they get it?

Sincerely,

David

from: **David Oppenheimer - Performance Impressions, LLC** <performanceimpressions@gmail.com>
reply-to: dave@performanceimpressions.com
to: calv@vn-a.com

date: Mon, Sep 8, 2014 at 6:47 PM
subject: Image Use on VN-A.com
mailed-by: gmail.com

Dear Mr. Van Noord,

I noticed that my photo is being used on your site at the following image URL: <http://vn-a.com/wp-content/uploads/2013/11/lakeresidential.jpg>

from: **David Oppenheimer - Performance Impressions, LLC** <performanceimpressions@gmail.com>

EXHIBIT D

reply- dave@performanceimpressions.com
to:

to: calv@vn-a.com

date: Thu, Sep 18, 2014 at 2:11 PM

subject: Re: Image Use on VN-A.com

mailed- gmail.com
by:

Dear Mr. Van Noord,

Once again, I am writing to ask who published my photo on your website and where they obtained it. It can be found at the following URL: <http://vn-a.com/wp-content/uploads/2013/11/lakeresidential-300x117.jpg>

My company does not have a license on file for your website's use of my work. I am trying to get to the bottom of how this copyright infringement occurred in an effort to resolve the matter outside of court.

Sincerely,

David

from: **David Oppenheimer - Performance Impressions, LLC** <performanceimpressions@gmail.com>

reply- dave@performanceimpressions.com
to:

to: Calvin Van Noord <calv@vn-a.com>

date: Mon, Oct 6, 2014 at 2:21 PM

subject: Copyright Infringement by Van Noord & Associates, Inc.

mailed- gmail.com
by:

Dear Mr. Noord,

I have attached a copy of the letter delivered to you by FedEx.

I appreciate your prompt response.

Sincerely,

David Oppenheimer

[Demand Letter attached]

from: **David Oppenheimer - Performance Impressions,**

EXHIBIT D

LLC <performanceimpressions@gmail.com>

reply- dave@performanceimpressions.com
to:

to: Calvin Van Noord <calv@vn-a.com>

date: Tue, Oct 28, 2014 at 3:10 PM

subject: Re: Copyright Infringement by Van Noord &
Associates, Inc.

mailed- gmail.com
by:

Dear Mr. Van Noord,

This matter remains unresolved. Please provide me a full accounting of your use of my work(s). Despite your lack of response to date, I remain hopeful that we can work together to resolve this matter outside of litigation.

If you put me directly in touch with your business insurer, we may be able to work together to resolve this matter pre-suit.

Sincerely,

David Oppenheimer

from: **David Oppenheimer - Performance Impressions, LLC** <performanceimpressions@gmail.com>

reply- dave@performanceimpressions.com
to:

to: Calvin Van Noord <calv@vn-a.com>

date: Fri, Nov 14, 2014 at 5:19 PM

subject: Re: Copyright Infringement by Van Noord &
Associates, Inc.

mailed- gmail.com
by:

Dear Mr. Van Noord,

Although you removed the infringing work from your webpage, this does not cover the damages that you are still liable for.

If you continue to ignore this matter, be aware that in addition to your liability for copyright infringement, the court can also hold you liable for my attorney's fees.

Sincerely,

David Oppenheimer

EXHIBIT D

from: **David Oppenheimer - Performance Impressions, LLC** <performanceimpressions@gmail.com>
reply-to: dave@performanceimpressions.com
to: Calvin Van Noord <calv@vn-a.com>

date: Mon, Dec 8, 2014 at 4:49 PM
subject: Re: Copyright Infringement by Van Noord & Associates, Inc.
mailed-by: gmail.com

Dear Mr. Van Noord,

As I previously mentioned, refusing to negotiate settlement in good faith outside of litigation can result in an additional award of attorney's fees besides damages for copyright infringement, see:

Masterfile Corporation v. Country Cycling & Hiking Tours By Brooks, Inc. Case #: 1:2006cv06363, at *9 (S.D.N.Y., Jan. 31, 2008)(holding that "[i]t was reasonable for Masterfile to bring this suit once Brooks declined to settle for anything greater than a nominal sum. Accordingly, even though Brooks itself may not have infringed Masterfile's copyrights willfully, Masterfile is entitled to recover its reasonable attorneys' fees and costs"). Note also that attorneys' fees and costs may far exceed damages in copyright infringement cases, see: Spooner v. EEN, Inc., 2011 WL 261178 (1st Cir. July 5, 2011)(available at <http://www.scribd.com/doc/59534023/Spooner-v-EEN-Inc>).

I would appreciate your reconsidering my offer to settle this matter outside of litigation. If you have not done so already, contact your insurer about covering damages in this matter. If you put me in direct contact with your insurer, we may be able to resolve this copyright infringement matter more conveniently for you.

Sincerely,

David Oppenheimer
